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SEP 22 2004

OFFICE OF PETITIONS

In re Application of :
Gerry Quinn : DECISION GRANTING PETITION
Application No. 10/613,570 :
Filed: 3 June, 2003 :
Attorney's Docket No. P/3771-6 : .

This is a decision on the petition filed on 18 August, 2004, styled under 37 CFR 1.182 and 1.183, which is being treated as a petition under 37 CFR 1.183 to waive the requirement for an extension of time fee with regard to the response filed on 18 August, 2004, to the Notice to File Corrected Application Papers mailed on 13 April, 2004, which set a two (2) month period for reply.

The petition is **DISMISSED** as inappropriate.

Petitioner states that the Notice mailed on 13 April, 2004, was not received by petitioners until 12 August, 2004. Petitioner has submitted a reply to the Notice, accompanied by a two (2) month extension of time. Petitioner requests, however, that the extension of time fee be waived and refunded.

37 CFR 1.183 states:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed.

However, the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought.¹

¹See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982).

Here, as the statutes and regulations provide petitioners with the means for requesting that the Office reset the period of reply when an Office communication is not timely received.² As such, it is not necessary to also fashion an extraordinary remedy, even assuming such would constitute a proper exercise of the rules. The petition is therefore dismissed.

As the \$130.00 petition fee is a prerequisite for the filing of a petition under 37 CFR 1.183, the petition fee has been charged to counsel's deposit account and will not be refunded.

It is noted that the Notice to File Corrected Application Papers was mailed by the Office of Initial Patent Examination (OIPE). OIPE has the authority to decide petitions to withdraw the holding of abandonment where OIPE mailed the Notice of Abandonment.³ Therefore, OIPE also has the authority to reset the period for reply, and refund any extension of time fee, if appropriate, where late receipt of a Notice mailed by OIPE is alleged.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for consideration of the present petition under 37 CFR 1.181.

Telephone inquiries concerning this matter may be directed to the undersigned at 703.308.6918.



Douglas I. Wood
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Office of Petitions

²See MPEP 710.06(I) and (II).

³MPEP 1002.02(q)(6).